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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

10 RYAN KARNOSKI, et al.

11 Plaintiffs,

12 v.

13 DONALD J. TRUMP, et al.

14 Defendants.

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16 STATE OF WASHINGTON,

17 Intervenor,

18 v.

19 DONALD J. TRUMP, et al.

20 Defendants.

CASE NO. C17-1297-MJP

ORDER DENYING MOTION FOR  
CLARIFICATION AND PARTIAL  
STAY OF PRELIMINARY  
INJUNCTION PENDING APPEAL

21 THIS MATTER comes before the Court on Defendants' Motion for Clarification and  
22 Motion for Partial Stay of Preliminary Injunction Pending Appeal. (Dkt. No. 106.) Having  
23 reviewed the Motion, the Responses (Dkt. Nos. 114, 119), and all related papers, the Court  
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1 DENIES the proposed clarification set forth in Defendants' Motion for Clarification and  
2 DENIES Defendant's Motion for Partial Stay of Preliminary Injunction Pending Appeal.

### 3 BACKGROUND

4 On July 26, 2017, President Donald J. Trump announced on Twitter that the United  
5 States government will no longer allow transgender individuals to serve in any capacity in the  
6 military. (Dkt. No. 34, Ex. 6.) Prior to this announcement, the military concluded that  
7 transgender individuals should be permitted to serve openly. On June 30, 2016, the Secretary of  
8 Defense issued a directive-type memorandum stating that "[n]ot later than July 1, 2017," the  
9 military would begin accession of transgender enlistees. (Dkt. No. 48, Ex. C at § 2.) On June  
10 30, 2017, Secretary of Defense James N. Mattis deferred the deadline to January 1, 2018. (Dkt.  
11 No. 34-3.) President Trump's July 26, 2017 announcement and the August 25, 2017 Presidential  
12 Memorandum thereafter prohibited the accession of openly transgender enlistees indefinitely (the  
13 "Accessions Directive"). (Dkt. No. 34, Exs. 6, 7.)

14 On December 11, 2017, the Court entered an order granting Plaintiffs' Motion for a  
15 Preliminary Injunction. (Dkt. No. 103.) The order enjoined Defendants from "taking any action  
16 relative to transgender individuals that is inconsistent with the status quo that existed prior to  
17 President Trump's July 26, 2017 announcement" regarding military service by transgender  
18 individuals. (Id. at 23.)

19 Defendants now request clarification as to the terms of the Court's Order. (Dkt. No.  
20 106.) Specifically, Defendants seek clarification as to whether Secretary Mattis may exercise  
21 "independent discretion" to further postpone the January 1, 2018 deadline for accession by  
22 transgender enlistees "to further study whether the policy will impact military readiness and  
23 lethality or to complete further steps needed to implement the policy." (Id. at 2.) In the  
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1 alternative, Defendants move for a partial stay of the preliminary injunction as to the Accessions  
2 Directive. (Id. at 4.)

## 3 DISCUSSION

### 4 I. Motion for Clarification

5 Defendants move for clarification of the Court’s Order as to the Accessions Directive.  
6 Essentially, Defendants contend that the Court’s Order does not prohibit Secretary Mattis from  
7 implementing a policy this Court has already enjoined. This claim is without merit. The Court’s  
8 Order clearly enjoined Defendants from “taking any action relative to transgender individuals  
9 that is inconsistent with the status quo that existed prior to President Trump's July 26, 2017  
10 announcement” regarding military service by transgender individuals. (Dkt. No. 103 at 23.)  
11 Prior to July 26, 2017, the status quo was a policy permitting accession of transgender  
12 individuals no later than January 1, 2018. (See Dkt. No. 48, Ex. C; Dkt. No. 34-3.) Any action  
13 by any Defendant that is inconsistent with this status quo is preliminarily enjoined.

### 14 II. Motion for Partial Stay

15 In the alternative, Defendants move for a partial stay of the Court’s Order granting a  
16 preliminary injunction as to the Accessions Directive, pending review by the Ninth Circuit.  
17 Defendants contend – for the first time during these proceedings – that they are not prepared to  
18 begin accessions of transgender enlistees by January 1, 2018. (Dkt. No. 106 at 4-6.) Defendants  
19 contend that Plaintiffs will not be harmed by a stay, and that they are likely to prevail on the  
20 merits of their appeal. (Id. at 6-8.) The Court will not stay its preliminary injunction pending  
21 appeal.

22 A stay pending appeal “is an intrusion into the ordinary processes of administration and  
23 judicial review.” Nken v. Holder, 556 U.S. 418, 427 (2009) (citation omitted). In determining  
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1 whether to grant a stay, the Court considers: (1) whether Defendants have made a strong showing  
2 that they are likely to succeed on the merits; (2) whether Defendants will be irreparably injured  
3 absent a stay; (3) whether issuance of the stay will substantially injure Plaintiffs and Washington  
4 State; and (4) whether the public interest supports a stay. See Nken, 556 U.S. at 434. The first  
5 two factors are the most critical. Id.; see also Washington v. Trump, 847 F.3d 1151, 1164 (9th  
6 Cir. 2017).

#### 7 **A. Likelihood of Success on the Merits**

8 The Court finds that Defendants have not made a “strong showing” that they are likely to  
9 succeed on the merits of their appeal. Nken, 556 U.S. at 434. Each of the arguments raised by  
10 Defendants already has been considered and rejected by the Court, and Defendants have taken no  
11 action to remedy the constitutional violations that supported entry of a preliminary injunction in  
12 the first place. (See Dkt. No. 103 at 15-20.) Defendants’ argument that Secretary Mattis has  
13 “independent authority to extend the effective date” for accessions by transgender enlistees is  
14 also unpersuasive. (Dkt. No. 106 at 7.) Secretary Mattis does not have authority to effectuate an  
15 unconstitutional policy, and certainly not one which has been enjoined.

#### 16 **B. Irreparable Injury to Defendants**

17 The Court finds that Defendants have not shown that they will be irreparably harmed  
18 without a stay. Defendants contend that complying with the Court’s Order will “impose  
19 extraordinary burdens” on the military as accession by transgender enlistees “necessitates  
20 preparation, training, and communication to ensure those responsible for application of the  
21 accession standards are thoroughly versed in the policy and its implementation procedures.”  
22 (Dkt. 107 at ¶ 5; see also Dkt. No. 106 at 4-5.) In particular, Defendants claim that “the military  
23 will need to promulgate new, complex, and interdisciplinary medical standards that will  
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1 necessarily require evaluation across several medical specialties, including behavior and mental  
2 health, surgical procedures, and endocrinology.” (Dkt. No. 106 at 4-5.) Defendants have had  
3 since June 2016 to prepare for accessions of transgender enlistees into the military, and the  
4 record indicates that considerable progress has been made toward this end. (See Dkt. No. 115 at  
5 ¶¶ 4-5; Dkt. No. 116 at ¶¶ 2-4; Dkt. No. 117 at ¶ 3.) In fact, on December 8, 2017, the  
6 Department of Defense issued a policy memorandum setting forth specific guidance for  
7 “processing transgender applicants for military service,” including guidelines for medical  
8 personnel. (Dkt. No. 120-1.) Notwithstanding their implementation efforts to date, Defendants  
9 claim that “the Department still would not be adequately and properly prepared to begin  
10 processing transgender applicants for military service by January 1, 2018.” (Dkt. No. 107 at  
11 107.) However, Defendants have provided no evidence that the accessions criteria for  
12 transgender enlistees are any more complex or burdensome than the criteria for non-transgender  
13 enlistees. (Dkt. No. 107 at ¶ 9.) Defendants’ conclusory claims are unsupported by evidence  
14 and insufficient to establish a likelihood of irreparable harm.

### 15 **C. Injury to Plaintiffs and Washington State and Impact on Public Interest**

16 Having found that Defendants have not shown either a likelihood of success on the merits  
17 or a likelihood of irreparable injury absent a stay, the Court need not reach the remaining factors.  
18 See Washington v. Trump, 847 F.3d at 1164. However, the Court also finds that these remaining  
19 factors do not support entry of a stay.

20 The Court already found that Plaintiffs and Washington State are likely to suffer  
21 irreparable injury absent a preliminary injunction, and for the same reasons, will be injured by a  
22 stay. With regard to the Individual Plaintiffs, the Court found that the Accessions Directive  
23 violates their constitutional rights, denies them dignity, and subjects them to stigmatization. (Id.  
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1 at 8, 20-21.) With regard to Washington State, the Court found that the policy threatens the  
2 State's ability to recruit and retain members of the Washington National Guard (and thereby  
3 protect its territory and natural resources) and to protect its residents from discrimination. (Id. at  
4 11-12, 21.) For similar reasons, the Court found that a preliminary injunction furthers the public  
5 interest. (Dkt. No. 103 at 21-22.) Defendants have provided no evidence to the contrary.

### 6 CONCLUSION

7 Because Defendants have been enjoined from "taking *any action* relative to transgender  
8 individuals that is inconsistent with the status quo that existed prior to President Trump's July 26,  
9 2017 announcement" regarding military service by transgender individuals, the Court  
10 CLARIFIES that *any action* intended to further delay the January 1, 2018 deadline for accession  
11 by transgender enlistees is enjoined, whether taken by Secretary Mattis or any other government  
12 agency or employee. Because Defendants have not demonstrated that a partial stay of the  
13 Court's Order is warranted, the Court DENIES Defendant's Motion.

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15 The clerk is ordered to provide copies of this order to all counsel.

16 Dated December 29, 2017.

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19 Marsha J. Pechman  
United States District Judge